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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/092,385 | 03/05/2002 | Jeffery J. Sheldon | IDEV:020US | 8270 |

7590 12/11/2006

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| EXAMINER |
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EREZO, DARWIN P

| ART UNIT | PAPER NUMBER |
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3731

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,385

Applicant(s)

SHELDON, JEFFERY J.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 12, 14, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 12, 14, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1,2,25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,340,367 to Stinson et al.

(claim 1) Stinson discloses a method of securing an intersection formed from two or more crossed strands **16** of a device suitable for implantation into a living tissue (a stent), the intersection defining at least two sections (seen in Fig. 12), the method comprising passing a radiopaque material through at least two of the at least two sections, wherein the passing includes bending the radiopaque material at a location, thereby defining a radiopaque securing material segment on each side of the location; and joining the two radiopaque securing material segments to form a loop (see Fig. 12).

Stinson teaches the use of radiopaque materials instead of non-radiopaque materials. However, the applicant has not provided any criticality with regards to the use of non-radiopaque material. In fact, the applicant recites that the invention could use both radiopaque and non-radiopaque materials (page 10, lines 23-27 of the specification). Moreover, the applicant further states that radiopaque materials may be used as visual markers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a radiopaque material or non-radiopaque material because the applicant has shown that either material are well known variants of each other.

(claim 2) Stinson discloses tying the securing elements (col. 11, lines 22-28).

(claims 25 and 26) Stinson discloses a device formed from the method above, wherein the device has a body having two strands that are crossed to form an intersection (Fig. 12), wherein the two strands have a free end (as seen in Fig. 3) ; and a radiopaque material securing the intersection by tying the radiopaque material around the intersection. See the rejection to claim 1 with regards to the use of non-radiopaque materials.

4. Claim 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stinson et al. and in view of The Ashley Book of Knots by Clifford W. Ashley.

Stinson teaches the method of securing an intersection formed from two or more crossed strands having an intersection defining at least two sections, wherein securing the intersection comprises the step of tying a non-radio opaque material around the crossed strands at said intersection. Stinson is merely silent with regards to how the

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non-radio opaque material is tied, which is what is recited in claim 12. However, Ashley discloses a variety of methods of forming knots. Specifically, Ashley teaches forming a "Lineman's Loop" on page 191. Such a knot is "strong, secure, and easily tied" (p. 191, line 8). Therefore, it would have been obvious to one having ordinary skill in the art of knots to secure the intersecting strands of Stinson's stent with a Lineman's Loop, as taught by Ashley, in order to quickly form strong knots.

Response to Arguments

5. Applicant's arguments with regards to the Goicoechea reference, filed 9/22/06, have been fully considered and are persuasive. The rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the previously cited Stinson reference. The rejection to claim 1 clearly states why the previously cited reference is once again being applied.

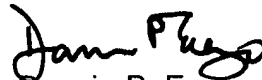
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who's telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Darwin P. Erez
Examiner
Art Unit 3731

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